

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on
Regulations Relating to Passenger Carriers,
Ridesharing, and New Online-Enabled
Transportation Services.

R.12-12-011
(Filed December 20, 2012)

**MOTION OF UBER TECHNOLOGIES, INC. FOR AN ASSIGNED COMMISSIONER
OR ADMINISTRATIVE LAW JUDGE RULING STAYING CERTAIN
REQUIREMENTS OF THE DECEMBER 19, 2019 ALJ RULING ORDERING UBER
TECHNOLOGIES, INC. TO FILE AND SERVE ITS US SAFETY REPORT**

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January 30, 2020

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OF THE STATE OF CALIFORNIA**

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Pursuant to Rule 11.1(b) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Uber Technologies, Inc. (“Uber”) respectfully requests an Assigned Commissioner or Administrative Law Judge to stay the requirements in the December 19, 2019 *ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve Its US Safety Report* (“December Ruling”) that Uber provide individual incident information in response to Questions 2.4.1 – 2.4.4 and employee information in response to Questions 1.1, 1.2, and 1.4 while the full Commission considers and rules on Uber’s concurrent Motion for Reconsideration to the full Commission of the January 27, 2020 *Administrative Law Judge’s Ruling Denying Motion of Uber Technologies, Inc. for Reconsideration of the December 19, 2019 ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve Its US Safety Report* (“January Denial”). Uber respectfully requests a stay given the significant harm to victims of sexual assault and sexual misconduct, Uber’s employees, and the public interest that would occur if certain requirements in the December Ruling is allowed to take effect.

The Commission generally applies an established four-part test for a stay.¹ As shown below, each of the relevant factors weighs in favor of the Assigned Commissioner or Administrative Law Judge granting such relief here.

First, Uber is likely to prevail on the merits of the Motion for Reconsideration it is filing concurrently with this motion. The January Denial fails to articulate any legitimate regulatory purpose for demanding specific incident information in a quasi-legislative proceeding or address any of the other substantial concerns Uber raised in its original Motion for Reconsideration filed on January 10, 2020.

Second, sexual assault victims, Uber employees, and the public interest will suffer irreparable harm without a stay. The December Ruling actively risks retraumatizing victims by inviting and allowing subsequent stakeholder investigation and comment on individual victim incidents and by allowing untrained individuals at the Commission to conduct an investigation into individual incidents of sexual assault and sexual misconduct. Furthermore, improperly conducted investigations create very real risks of compromising law enforcement investigations and negatively affecting criminal prosecutions.

Public disclosure of individuals working on Uber's Safety Report or on Uber's Safety Team irreparably forces these individuals to face public scrutiny and disclosure. Uber employees working on the Safety Report and on Uber's Safety Team have a reasonable

¹ See D.07-08-034, mimeo at 4 (“(1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case” footnote omitted.)

expectation of privacy. No regulatory purpose is achieved by publicly disclosing and having stakeholders comment on their names, titles, and contact information. Finding qualified and caring individuals to assist with the important work associated with the Safety Report and on Uber's Safety Team is difficult and these individuals should not be faced with the possibility of public scrutiny, disclosure, or harm.

Third, the balance of harms strongly favors the grant of stay pending full Commission review of the Motion for Reconsideration. The Commission has articulated no specific or legitimate regulatory purpose for demanding specific incident information in a quasi-legislative proceeding. Thus, the Commission will not be harmed by suspending the requirements that Uber provide individual incident information in response to Questions 2.4.1 – 2.4.4 and employee information in response to Questions 1.1, 1.2, 1.4 while the full Commission considers and rules on Uber's concurrent Motion for Reconsideration to the full Commission – the Commission has no specific or immediate use for the information anyway. To the extent that the Commission wishes to ill-advisedly “conduct follow-up investigations into riders who say they are victims of sexual assaults or misconduct”² (despite not being a law enforcement agency nor having Commission staff with the specific and specialized training necessary to question survivors³), the passage of additional time will not significantly impede any such inappropriate investigations and will ensure that victims will have additional time before potentially being confronted with past trauma.

² Carolyn Said, *California to Uber, Lyft: Why aren't drivers employees?*, San Francisco Chronicle (December 20, 2019), available at: <https://www.sfchronicle.com/business/article/California-to-Uber-Lyft-Why-aren-t-drivers-14922008.php>

³ See Motion for Reconsideration at 9-10.

Similarly, the Commission has articulated no specific or legitimate regulatory purpose for demanding employee information be shared publicly. The bell cannot be unrung if employee information is disclosed publicly. However, the employee names and contact information will still be available to the Commission and the public at a later date if Uber is forced to disseminate this information publicly. Furthermore, as it has done in the past, Uber will continue to facilitate specific inquiries into the specific practices and procedures at Uber, including those that Uber describes in its Safety Report or in its concurrent response to the December Ruling, by making the appropriate and most knowledgeable business personnel available to meet with Commission staff.

Finally, other relevant factors weigh in favor of a grant of stay. The January Denial inappropriately singles out Uber when the Commission has made no similar requirements of any other TNC. Uber undertook a first-of-its-kind effort of voluntarily issuing a comprehensive publication that shares details on Uber's safety progress, its processes, and data related to the reports of the most serious safety incidents reported in connection with its platform. The Administrative Law Judge's December Ruling, however, hinders that goal. The Administrative Law Judge's demand for a wide swath of data -- some of which is highly sensitive and with no apparent nexus to the work of the Administrative Law Judge in the Rulemaking -- penalizes Uber for efforts that the Commission should instead be incentivizing the rest of the TNC industry to follow. By not granting the stay, the Commission is perversely punishing Uber for its good deed. The public interest is best served by granting the stay.

For all these reasons, Uber respectfully requests a stay of the requirements in the December Ruling that Uber provide individual incident information in response to Questions 2.4.1 – 2.4.4 and employee information in response to Questions 1.1, 1.2, and 1.4 while the full Commission considers and rules on Uber’s concurrent Motion for Reconsideration to the full Commission of the January Denial.

Respectfully submitted,

/s/

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**[PROPOSED] ASSIGNED COMMISSIONER’S RULING GRANTING MOTION OF
UBER TECHNOLOGIES, INC. FOR AN ASSIGNED COMMISSIONER OR
ADMINISTRATIVE LAW JUDGE RULING STAYING CERTAIN REQUIREMENTS
OF THE DECEMBER 19, 2019 ALJ RULING ORDERING UBER TECHNOLOGIES,
INC. TO FILE AND SERVE ITS US SAFETY REPORT**

On January 30, 2020, Uber Technologies, Inc. (“Uber”) filed a motion to request the Assigned Commissioner or Administrative Law Judge to stay the requirements in the December 19, 2019 *ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve Its US Safety Report* that Uber provide individual incident information in response to Questions 2.4.1 – 2.4.4 and employee information in response to Questions 1.1, 1.2 and 1.4 while the full Commission considers and rules on Uber’s concurrent Motion for Reconsideration to the full Commission of the January 27, 2020 *Administrative Law Judge’s Ruling Denying Motion of Uber Technologies, Inc. for Reconsideration of the December 19, 2019 ALJ Ruling Ordering Uber Technologies, Inc. to File and Serve Its US Safety Report*.

No opposition to this Motion has been submitted and the time for submission of such opposition has expired. No hearing on the Motion is necessary.

Good cause having been shown, and no opposition to the Motion having been submitted,

Therefore, **IT IS RULED** that:

1. The request of Uber is granted.

Dated _____, 2020 at San Francisco, California.

Assigned Commissioner